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Chan Pack Choon & Anor v Chong Ian Shin

B HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO 24–1147–09 OF 2015
AKHTAR TAHIR J
24 FEBRUARY 2016

C *Land Law — Caveats — Removal of — Applicant sought to remove private caveat on contention that land bought from registered owner — Whether registered owner held land as trustee for defendant — Whether land was security loan by registered owner from plaintiff — National Land Code s 327*

D In this application, the plaintiff sought to remove the private caveat lodged by the defendant under s 327 of the National Land Code ('the NLC'). The plaintiff contended that he had bought the land from the registered owner of the land. The name of the registered as endorsed on the land title was Chong Kiat Chau. In opposing the application, the defendant argued that the E registered owner held the land as a trustee for the defendant and in support of his contention, the defendant exhibited the trust deed that showed the registered owner held the land as trustee. The defendant further contended that the land was used merely as a security for a loan taken by the said Chong Kiat Chau from the plaintiff.

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Held, allowing the application with cost of RM3,000:

(1) There was no such memorial describing the registered owner as holding the land in trust for any person. In the absence of such a memorial, the registered owner had an indefeasible title and the title could only be G challenged by way of fraud or forgery, as stated in s 340 of the NLC (see para 5).

(2) The registered owner having an indefeasible title had a right to deal with the land in the manner he thought fit including a right to sell which he H did in this case to the plaintiff. The defendant had no right or interest over the land to lodge the private caveat. Furthermore, s 332 of the NLC provided that for a trust property, a trust caveat should be lodged which could prevent the transfer of the land. In this case no such trust caveat was lodged (see paras 6–7).

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[Bahasa Malaysia summary

Dalam permohonan ini, plaintif memohon untuk memotong kaveat persendirian yang dimasukkan oleh defendan di bawah s 327 Kanun Tanah Negara ('KTN'). Plaintif berhujah bahawa dia telah membeli tanah tersebut

daripada pemilik berdaftar tanah tersebut. Nama yang didaftarkan seperti yang diendorskan atas hak milik tanah adalah Chong Kiat Chau. Dalam membantah permohonan tersebut, defendan berhujah bahawa pemilik berdaftar memegang tanah sebagai pemegang amanah bagi defendan dan dalam menyokong hujahannya, defendan mempamerkan surat ikatan amanah yang menunjukkan pemilik berdaftar memegang tanah tersebut sebagai pemegang amanah. Defendan selanjutnya berhujah bahawa tanah digunakan hanya sebagai jaminan untuk pinjaman yang di ambil oleh Chong Kiat Chau daripada plaintif.

Diputuskan, membenarkan permohonan dengan kos sebanyak RM3,000:

(1) Tidak terdapat memorial sedemikian menjelaskan pemilik berdaftar sebagai memegang tanah tersebut dalam amanah untuk mana-mana orang. Dalam ketiadaan memorial sedemikian, pemilik berdaftar mempunyai hak milik tak boleh sangkal dan hak milik tersebut hanya boleh dicabar melalui fraud atau pemalsuan, seperti yang dinyatakan dalam s 340 KTN (lihat perenggan 5).

(2) Pemilik berdaftar mempunyai hak milik tak boleh sangkal mempunyai hak untuk berurusan dengan tanah dalam cara yang dianggap wajar termasuk hak untuk menjual yang mana dilakukannya dalam kes ini kepada plaintif. Defendan tidak mempunyai hak atau kepentingan ke atas tanah untuk memasukkan kaveat persendirian tersebut. Selanjutnya, s 332 KTN memperuntukkan bahawa bagi hartanah amanah, kaveat amanah patut dimasukkan yang boleh menghalang pemindahan tanah. Dalam kes ini tiada kaveat amanah sedemikian dimasukkan (lihat perenggan 6–7).]

Notes

For cases on removal of caveats, see 8(2) *Mallal's Digest* (5th Ed, 2015) paras 2711–2720.

Legislation referred to

National Land Code ss 327, 332, 340, 344

Chong Ian Shin (Chong Ian Shin) for the appellant.
TC Foo (Winston Ng & Teh) for the respondent.

Akhtar Tahir J:

[1] The plaintiff applied by the way of originating summons to remove the private caveat lodged by the defendant, under s 327 of the National Land Code. Section 327 of the National Land Code provides as follows:

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(1) Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, ex parte) may make such order on the application as it may think just.

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(2) The Registrar shall, on being duly served with any order under this section for the removal of a caveat, cancel the entry thereof on the register document of title, and note thereon the reason for the cancellation and the date thereof.

(3) Every cancellation under sub-section (2) shall be signed and sealed.

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[2] The land upon which the caveat was lodged was held under Grant Title 293663, Lot 4195, Bandar Subang Jaya, Daerah Petaling, Negeri Selangor. It was the contention of the plaintiff that he had bought the land from the registered owner of the land. The name of the registered as endorsed on the land title exhibited with the supporting affidavit was Chong Kiat Chau. The endorsement on the land title read as follows:

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CHONG KIAT CHAU, No Kad Pengenalan: 761111-14-5875 Warganegara Malaysia, 1/1 bahagian

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NO 45, JALAN BULAN U5/BL SEKSYEN U5 BANDAR PINGGIRAN SUBANG SHAH ALAM, Selangor.

[3] In opposing the application the defendant contended that the registered owner held the land as a trustee for the defendant. In his affidavit the defendant exhibited the trust deed that showed the registered owner held the land as trustee. The defendant further contended that the land was used merely as a security for a loan taken by the said Chong Kiat Chau from the plaintiff.

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[4] Section 344 of the National Land Code lays down the procedure of registration as a trustee in land and is worded as follows:

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(1) Where, by any instrument of dealing or order of the Court or Land Administrator, any alienated land or share or interest therein is transferred or transmitted to, vested in or created in favour of any person or body 'as trustee', or two or more persons or bodies 'as trustees', *the Registrar shall so describe him, it or them in the memorial of registration.* (Emphasis added.)

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(2) The proprietor or co-proprietors of any alienated land, and any person or body in whom any share or interest in alienated land is for the time being vested, may apply to the Registrar to be registered in respect of that land, share or interest 'as trustee' or, as the case may be, 'as trustees'; and the Registrar shall give effect to any such application by making the appropriate addition to, or amendment of, the existing memorial of registration.

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(3) Where the words 'as trustee' or 'as trustees' have been included in any memorial of registration pursuant to sub-section (1) or (2), or the

corresponding provisions of any previous land law, any instrument declaring the trusts to which the land, share or interest is subject may, upon payment of the prescribed fee, be deposited with the Registrar for safe custody and reference; and no instrument of dealing shall be unfit for registration by reason only of the fact that it refers to any instrument so deposited.

(4) Sub-sections (1) and (2) shall have effect subject to the provisions of section 36 of the Trustee Ordinance, 66 of 1949 (which inter alia provides that, except in the case of any immovable property vested in trustees for charitable, religious or public purposes, the number of trustees of any immovable property shall not exceed four).

[5] In the land grant before me there was no such memorial describing the registered owner as holding the land in trust for any person. In the absence of such a memorial it is my decision that the registered owner has an indefeasible title and the title can only be challenged by way of fraud or forgery as is stated in s 340 of the National Land Code as follows:

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible –

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2) –

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent –

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(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

(b) the determination of any title or interest by operation of law.

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[6] In this case the registered owner having an indefeasible title had right to deal with the land in the manner he thought fit including a right to sell which he did in this case to the plaintiff. The defendant has clearly no right or interest over the land to lodge the private caveat.

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[7] Further it is provided under s 332 of the National Land Code that for a trust property a trust caveat should be lodged which could prevent the transfer of the land. In this case no such trust caveat has been lodged. Section 332 states as follows:

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(1) A caveat under this section shall be known as a 'trust caveat', and may be entered by the Registrar in respect of any land or interest which (pursuant to section 344, or any corresponding provision of any previous land law) is expressed to be held by any persons or bodies as trustees.

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(2) The effect of any trust caveat shall be precisely stated therein, and may be to prohibit, either absolutely or except subject to conditions, the registration, endorsement or entry of all or any of the following –

(a) any instrument of dealing, or class or description of instrument of dealing, directly affecting the trust property;

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(b) any claim to the benefit of any tenancy exempt from registration granted directly thereout; and

(c) any lien-holder's caveat in respect thereof:

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Provided that no such caveat shall prohibit the registration of any instrument which was presented prior to the time from which it takes effect, or the endorsement or entry of any claim or lien-holder's caveat where the application for endorsement or entry was received prior to that time.

(3) Where the registration of any instrument or the endorsement or entry of any claim or lien-holder's caveat is prohibited by any trust caveat, the Registrar shall reject the instrument or, as the case may be, the application for endorsement or entry.

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(4) On rejecting any instrument or application for endorsement, the Registrar shall take the like steps as if he had rejected it pursuant to section 298 or, as the case may be, 317.

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[8] Based on the factors above I allowed the application of the plaintiff to remove the private caveat lodged by the defendant and awarded a cost of RM3,000 to the plaintiff.

Application allowed with costs of RM3,000.

Reported by Afiq Mohamad